

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision:12th December, 2011

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LPA 797/2011

UNION PUBLIC SERVICE COMMISSION Appellant
Through: Mr. Naresh Kaushik & Ms. Amita
Kalkal Chaudhary, Adv.

versus

N SUGATHAN Respondent
Through: None.

AND

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LPA 802/2011

UNION PUBLIC SERVICE COMMISSION Appellant
Through: Mr. Naresh Kaushik & Ms. Amita
Kalkal Chaudhary, Adv.

versus

NARESH KUMAR Respondent
Through: None.

AND

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LPA 803/2011

UNION PUBLIC SERVICE COMMISSION Appellant
Through: Mr. Naresh Kaushik & Ms. Amita
Kalkal Chaudhary, Adv.

versus

GOURHARI KAMILA Respondent
Through: None.

AND

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LPA 810/2011

UNION PUBLIC SERVICE COMMISSION Appellant
Through: Mr. Naresh Kaushik & Ms. Amita
Kalkal Chaudhary, Adv.

versus

UDAYA KUMARA Respondent

Through: None.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. Notices of the appeals were issued. None of the respondents appear inspite of service; however in LPA 797/2011 a letter dated 1st December, 2011 has been received from the respondent stationed at Kerala informing that he is unable to appear because of ailments; in LPA 810/2011 a counter affidavit has been filed by the respondent. It is not expedient to await the respondents any further and we have heard the counsel for the appellant UPSC.

2. These intra appeals, though against separate orders and different respondents, are taken up together since all entail the same question of exemptions available to the appellant UPSC under the Right to Information Act, 2005.

LPA 797/2011.

3. LPA 797/2011 is preferred against the order dated 4th May, 2011 of the learned Single Judge dismissing W.P.(C) No. 2918/2011 preferred by the appellant UPSC. The said writ petition was preferred impugning the order dated 14th February, 2011 of the Central Information Commission (CIC) directing the appellant UPSC to disclose to the respondent therein

the list of shortlisted candidates for the post of Senior Instructor (Fishery Biology) along with their experience and educational qualifications.

4. It was/is the stand of the appellant UPSC that the said information was exempt from disclosure under Section 8(1) (e) and (j) of the Right to Information Act, 2005. The CIC in its order dated 14th February, 2011 held that the information as to the experience and educational qualification of the shortlisted candidates in the selection process could not be said to be held by the appellant UPSC in a fiduciary capacity or as personal information and disclosure of such information was in the interest of transparency as it removed all doubts as to the fairness of the process of short listing. The learned Single Judge did not find any infirmity in the order of the CIC and held the provisions of Section 8(1) (e) and (j) to be inapplicable thereto.

5. It is the contention of the appellant UPSC in appeal also that such information is the personal detail of the selected candidate and the CIC and the learned Single Judge have not appreciated the distinction between maintaining transparency and maintaining confidentiality; that the applicants in the selection process submit their information to the UPSC in confidence and UPSC cannot be directed to divulge the same.

6. We are unable to accept the said contention. The information submitted by an applicant seeking a public post, and which information comprises the basis of his selection to the said public post, cannot be said

to be in private domain or confidential. We are unable to appreciate the plea of any secrecy there around. An applicant for a public post participates in a competitive process where his eligibility/suitability for the public post is weighed/compared vis-à-vis other applicants. The appointing/recommending authorities as the UPSC, in the matter of such selection, are required and expected to act objectively and to select the best. Such selection process remains subject to judicial review. Though at one time it was held (See **Dr. Duryodhan Sahu v. Jitendra Kumar Mishra** (1998) 7 SCC 273) that a writ of *quo warranto* questioning appointment to a public office/post cannot be filed in public interest but some exceptions have been carved out to the said principle also (See **N. Kannadasan v. Ajay Khose** (2009) 7 SCC 104).

7. Moreover the information seeker i.e. the respondent herein in the present case is not a stranger to the selection process but the father of another applicant. Certainly an applicant to a public post who has been overlooked is entitled to know the reasons which prevailed with the appointing/recommending authority for preferring another over him. Without such information, the applicant who has remained unsuccessful would not even be in a position to know as to why he/she was not appointed and another preferred over him/her and would also not be able to seek judicial review against the irregularity if any in the appointment/selection process. Moreover, we are unable to fathom the secrecy/confidentiality if any as to the educational qualification and

experience of the selectee to a public post; such information ordinarily also is in public domain and educational qualifications and experience are something to be proud of rather than to hide in a closet. Whosoever on the basis of his educational qualification and experience seeks appointment particularly to a public office cannot claim any secrecy/confidentiality with respect thereto.

8. It is also not the plea of the appellant UPSC that the selectee had furnished the information as to his/her educational qualification and/or experience to the appellant UPSC with any rider as to its disclosure as in fact he could not. We also find Section 8 (1) (e) and (j) under which exemption is claimed, themselves carve out an exception of the disclosure of the information being in public interest. We are of the view that disclosure of information as to the educational qualification and experience of a person selected/shortlisted for a public post is in public interest in as much as the selectee is seeking the benefit of appointment to the public post on the basis thereof and the competitors in the appointment process, if not the public are definitely entitled to know the qualifications and experience of the occupant of such public post. The Apex Court in ***The Institute of Chartered Accountants of India v. Shaunak H. Satya*** (2011) 8 SCC 781 held that the object of the RTI Act is *inter alia* to ensure transparency and bring in accountability. It was further held that examining bodies should change their old mindset and tune themselves to the new regime of disclosure of maximum information.

9. While on the subject, we may clarify that what we have observed may not apply to information of certain nature viz. medical information or information relating to the family, even if required to be submitted for the purpose of selection/appointment; however need is not felt to elaborate further on the said aspect, the same being not relevant to the matter in controversy.

10. We may notice that Supreme Court in ***CBSE v. Aditya Bandopadhyay*** (2011) 8 SCC 497 has held that an examining body cannot be said to be in a fiduciary relationship with the examinee. It was also held that the examining body is not in a fiduciary relationship qua the examiner, though entitled to protect the identity of examiner.

11. We therefore do not find any merit in LPA 797/2011 and dismiss the same.

LPA 802/2011.

12. LPA 802/2011 is preferred against the order dated 19th April, 2011 of the learned Single Judge dismissing W.P.(C) No. 2442/2011 preferred by the appellant UPSC impugning the order dated 12th January, 2011 of the CIC directing the appellant UPSC to provide to the respondent/information seeker photocopies of the experience certificates of the candidates who applied for the post of Senior Scientific Officer (Biology) in Forensic Science Laboratory of the Government of National Capital Territory of Delhi and who were interviewed on 10th & 11th September, 2009.

13. In this case also the defence of the appellant UPSC was of Section 8(1) (j) of the Act. The CIC held that since length of experience was an eligibility condition for being invited for the interview, the experience certificate furnished by the candidates could not be treated as personal information and directed the appellant UPSC to provide photocopies of the experience certificates of the candidates who had been invited for the interview. The respondent/information seeker in the present case was himself one of the applicants and had not been invited for the interview. The learned Single Judge has while dismissing the writ petition held that photocopies of experience certificates cannot be held to be invasion of privacy or requiring the confidentiality under Section 8(1)(j) of the Act and further held that disclosure of such information could also be said to be in larger public interest.

14. The challenge by the appellant UPSC in this appeal is the same as in LPA 797/2011 (*supra*) and need is as such not felt to reiterate what has already been observed hereinabove. Those who are knocked out before the interview even and did not have a chance to compete any further, are definitely entitled to know that they have not been knocked out arbitrarily to deprive them from even competing any further.

15. We therefore do not find any merit in this appeal also and dismiss the same.

LPA 803/2011.

16. LPA 803/2011 is preferred against the order dated 19th May, 2011 of the learned Single Judge dismissing W.P.(C) No. 3365/2011 preferred by the appellant UPSC impugning the order dated 7th February, 2011 of the CIC directing the appellant UPSC to disclose information on the number of years of experience of all the candidates shortlisted for interview to the post of Dy. Director (Ballistics) in the Central Forensic Science Laboratories and also provide photocopies of experience certificates of all the candidates called for the interview.

17. The position in this case is the same as in LPA 802/2011 and need is not felt to discuss the issue again. We may notice that CIC itself has restricted the information directed to be supplied to only shortlisted/those called for interview and not allowed information qua others who were not even called for the interview.

18. Axiomatically LPA 803/2011 is also dismissed.

LPA 810/2011.

19. LPA 810/2011 is preferred against the order dated 19th April, 2011 of the learned Single Judge dismissing the W.P.(C) No.2444/2011 preferred by the appellant UPSC impugning the order dated 12th January, 2011 of the CIC directing the appellant UPSC to furnish to the respondent/information seeker the details of the candidates who applied for the post of Dy. Government Counsel in the Department of Legal Affairs,

Ministry of Law & Justice pursuant to an advertisement No.13/2007 and for which interviews were held on 12th June, 2009. The information sought relates to date of birth, year and date of completion of law degree, year and date of completion of LL.M. degree if any, date of enrolment as Advocate and their teaching or research experience in law. The respondent/information seeker in this case also was an applicant to the post and had not been called for interview. The defence of the appellant UPSC in the present case also is the same as in the first appeal above.

20. The present appeal is different to the extent that the information sought in this case relates to all the applicants for the post and not merely to those who had gone past the stage at which the respondent/information seeker had been eliminated. We are unable to fathom the right if any of the respondent/information seeker to information qua those who are similarly eliminated as him. Such information relating to persons who though may have been the applicants to a public post but were eliminated in the selection process at the same stage as the information seeker, cannot be said to be necessary in public interest or for the sake of transparency or otherwise. An applicant who has been eliminated and is satisfied with his elimination is entitled to object to the disclosure of the information submitted by him to the appointing/recruiting agency.

21. Though the respondent has filed a counter affidavit in this appeal but even there-from we are unable to decipher the need to him of such

information relating to other applicants similarly eliminated as him. Though we are conscious that the right to information under the Act is *de hors* the need therefor or interest therein but it may not be lost sight of that the information submitted by an applicant for a public post, who is eliminated from the selection process, is in the hands of the appointing/recruiting agency a third party information and does not enter the public domain as long as he is so eliminated from the selection process. We are therefore inclined to restrict the information required to be furnished in this case to that relating to only those candidates called for the interview.

22. We accordingly modify the order of the CIC by restricting it to the supply of information as sought relating to those called for the interview and clarify that the appellant UPSC is not required to disclose the information relating to applicants for the post who were not even called for the interview. LPA 810/2011 is accordingly partly allowed.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

DECEMBER 12, 2011

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